

THE RADIANCE FOUNDATION, INC.
and RYAN BOMBERGER, individually,

Plaintiffs/Counterdefendants,

v.

NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,

Defendant/Counterclaimant.

I, BENJAMIN TODD JEALOUS, hereby declare and state as follows:

2. I am President and Chief Executive Officer of the NAACP and have held this position since 2008. Founded in 1909, the NAACP is the nation's oldest and largest civil rights organization. Along with its more than half a million members nationwide, NAACP fights for social justice for all Americans. Its mission is to advance the cause of equality and justice in all areas of society, and is dedicated to advocating on such core issues as voting rights, economic justice, criminal justice, health and environmental justice, and education. NAACP's leadership

consists of prominent individuals in American society, including lawyers, government officials, clergy, physicians, policymakers, and social advocates.


3. I previously served as President of the Rosenberg Foundation and was founding director of Amnesty International's Human Rights Program. I began my career as a community organizer in Harlem in 1993 with the NAACP Legal Defense Fund while working my way through college. I am a graduate of Columbia University and Oxford University, where I studied as a Rhodes Scholar.

4. As President and CEO of the NAACP, I am responsible for overseeing the daily operations of the organization and its over 170 employees.

5. In recent years, the issues of health justice and equality have become increasingly important and critical for African Americans and other people of color. NAACP has adopted and implemented a four-tiered health agenda to improving the health and well-being of African American families and families of color. These four tiers consist of: (1) childhood obesity – advocating changes in policies and programs at the local, state and federal levels and executing an outreach plan to educate African American families and increase awareness of the root causes of childhood obesity; (2) HIV/AIDS – advocating for increased testing, education and policies aimed at stopping the rates of new infections and increasing access to care in communities of color; (3) healthcare system reform – advocating and mobilizing in support of the passage of the health care reform bill for all Americans; and (4) health disparities – assisting in the eradication of racial and ethnic health disparities, identifying social and environmental factors that affect health and wellness in communities of color, and engaging the workforce to increase the representation of people of color in the medical and public health professions.

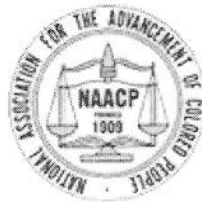
6. On the issue of abortion, NAACP has not supported abortion but rather supports a woman's right to choose.

7. For over one hundred years, NAACP has used its NAACP trademark to identify its organization and the services it provides to communities of color, and has registered this and other trademarks with the United States Patent and Trademark Office ("USPTO"). These trademarks (hereinafter referred to as the "NAACP Registered Marks") are set forth below:

Mark	U.S. Registration No.	Registration Date	Goods/Services
NAACP	1,188,182	01/26/1982	Association services, namely, providing legal assistance, technical assistance and other resources to achieve civil rights in education, voting, housing, employment and economic opportunity, in International Class 42.
THE CRISIS	3,052,885	01/31/2006	Magazines in the field of social issues, and posters, in International Class 16 .
IMAGE AWARDS	3,014,745	11/15/2005	Organizing and conducting the presentation of awards recognizing exemplary works, people or projects that promote a positive impression of people of color; educational and entertainment services in the nature of a live show and broadcast of the presentation of awards recognizing exemplary works, people or projects that promote a positive impression of people of color, in International Class 41.
ACT-SO and Design 	1,445,551	06/30/1987	Providing academic scholarships to minority high school students who have demonstrated superior achievements in any of the disciplines of the sciences, humanities or the arts, in International Class 36.
ACT-SO (Stylized)	1,444,418	06/23/1987	Providing academic scholarships to minority high school students who have demonstrated superior achievements in

ACT-SO			any of the disciplines of the sciences, humanities or the arts, in International Class 36.
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8. In addition, since its founding in 1909 and continuing through to the present and without abandonment, NAACP has extensively used in interstate commerce throughout the United States the NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE mark and its seal logo (the “NAACP Seal”) to identify its organization and its services to the general public of the United States. As a result of such use, NAACP owns valuable common law rights in and to the NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE mark and the NAACP Seal, an image of which is reproduced below:



The NAACP Registered Marks, the NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE mark, and the NAACP Seal are hereinafter collectively referred to as the “NAACP Marks.”

9. NAACP has promoted and continues to promote its organization, its services and the NAACP Marks extensively through virtually every available type of digital, broadcast, and print media, including but not limited to national, regional, and local print publications, billboards, signage, television, and the Internet.

10. NAACP also actively promotes its organization, services and the NAACP Marks through popular and highly-trafficked social networking websites, including FACEBOOK, TWITTER and LINKEDIN. NAACP’s FACEBOOK page has received over a million “likes.”

11. In addition, NAACP presents annually its Image Awards, the nation's premier event celebrating the outstanding achievements and performances of people of color in the arts as well as those individuals or groups who promote social justice. The honorees, presenters and performers at the Image Awards have included many of the major celebrities in America as well as international political figures and dignitaries. Each year, the NAACP Image Awards program is televised nationally to an audience of millions of viewers. Each telecast of the NAACP Image Awards prominently displays and features the NAACP Marks.

12. NAACP has expended significant resources and investment to establish and build the NAACP Marks as distinctive, well-known and famous marks.

13. As an organization dedicated to fighting for social justice and equality for all Americans, the NAACP respects the right of free speech guaranteed by the First Amendment. Indeed, the First Amendment's guarantee of freedom of speech is at the core of our democracy. Just as the NAACP has raised its voice against those who perpetuate and foster the unequal and disparate treatment of people of color, others have criticized the NAACP and expressed their disagreement with our policies, activities, and mission. This is the type of free and open debate and expression of conflicting ideas and values that the First Amendment guarantees to all Americans. While we do not agree with many of the criticisms leveled against our organization, we recognize that those who express such criticisms have the Constitutional right to do so, as do we when we voice our criticism of others.

14. However, when we learned in January 2013 through an alert generated by the Google Internet search engine¹ that the Plaintiffs were using the registered NAACP mark and the NAACP Seal together with the name "The National Association for the Abortion of Colored

¹ A Google alert provides e-mail updates to Google users of the latest relevant Google results related to a submitted query, which in our case was "NAACP."

People” in connection with a commercial “ad campaign” to expose the NAACP’s alleged “pro-abortion” stance, we had no choice but to vigorously object to such activity. A true and correct copy of the Google alert results is attached hereto as Exhibit A.

15. We therefore sent through our attorney a letter to the Plaintiffs, dated January 28, 2013, demanding that they cease and desist from engaging in this misuse of the NAACP Marks and from using the name “The National Association for the Abortion of Colored People,” which grossly misrepresents and distorts the core values, beliefs, and mission of the NAACP. A true and correct copy of our attorney’s January 28, 2013 letter is attached hereto as Exhibit B.

16. Our attorney’s letter to the Plaintiffs expressly stated that “[w]hile you certainly are entitled to express your viewpoint, you cannot do so in connection with a name that infringes on the NAACP’s rights.”

17. The Plaintiffs’ use of “The National Association for the Abortion of Colored People” in tandem with our registered NAACP mark and the NAACP Seal tarnishes the NAACP’s reputation and goodwill as symbolized by the NAACP Marks by falsely indicating that the NAACP is pro-abortion when in fact it is not and, indeed, that the central mission of the NAACP is to promote and support the abortion of African-Americans and other people of color.

18. Further, the Plaintiffs’ use of “The National Association for the Abortion of Colored People” interchangeably with our registered NAACP mark falsely suggests that “The National Association for the Abortion of Colored People” is in fact the full name of the NAACP or that the NAACP has changed its name to “The National Association for the Abortion of Colored People,” thus creating the likelihood that people would believe that the abortion of African-Americans and other people of color is central to the NAACP’s mission and to attribute the Plaintiffs’ views to the NAACP.

19. Despite our demand that the Plaintiffs stop their misuse of our marks, the Plaintiffs filed a lawsuit against the NAACP in this Court seeking a declaratory judgment. On April 8, 2013, we responded to the Plaintiffs' Complaint and asserted a Counterclaim against the Plaintiffs for trademark infringement, trademark dilution, and related claims.

20. The NAACP provides community outreach services on a range of pressing social issues of vital importance to the African-American community, including, for example, criminal justice, economic justice, health, voting rights, and education.

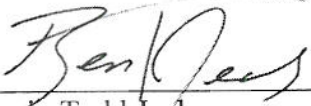
21. In addition, the NAACP actively solicits contributions from, among others, members of the African-American community and other people of color to support its programs and outreach activities.

22. Furthermore, the NAACP operates a website that is accessible to members of the general public via the Internet.

23. The NAACP also purchases billboard space for the purpose of promoting and publicizing its campaigns and outreach activities.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13 day of May, 2013 at Baltimore, Maryland.


Benjamin Todd Jealous

WDC 372802142v2

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2013, the foregoing Declaration of Benjamin Todd Jealous was filed with the Clerk of the Court using the CM/ECF filing system and that service will thereby be accomplished on:

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*Attorney for Plaintiffs The Radiance Foundation, Inc.
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/s/ David G. Barger

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Exhibit A

From: Google Alerts <googlealerts-noreply@google.com>

Date: Thu, 17 Jan 2013 03:20:14 +0000

To: <cathygrantham@aol.com>

Subject: Google Alert - NAACP

News

18 new results for NAACP

Resource Center and NAACP combine forces to celebrate MLK weekend with ...

Santa Cruz Sentinel

The upcoming Martin Luther King Jr. holiday is, this year, an entire weekend celebration of performances and workshops in Santa Cruz, titled "The Power of Songs for Social Change." The event takes place over three days beginning Friday as a ...

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NAACP: National Association for the Abortion of Colored People

LifeNews.com

The NAACP's selective, and often feigned, outrage on a myriad of issues is befitting of a multiple personality disorder, with its stronger personality being one that embraces all things liberal, most things socialistic, and nothing pro-life. They'll ...

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SALISBURY: NAACP hosts guest speaker from Mission of Mercy Dental Program

Delmarva Now

SALISBURY — Richard H. Van Gelder, community chairman of the 2013 Eastern Shore Mission of Mercy Dental Program and a vice president at the Hebron Savings Bank, will be the guest speaker for the National Association for the Advancement of Colored ...

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SALISBURY: NAACP financial literacy seminar to be held for middle and high ...

Delmarva Now

SALISBURY — Wicomico County NAACP Branch 7028 will host a free financial literacy seminar addressing how to write checks, budget, invest and save. The targeted audience is middle and high school students. President Mary Ashanti said the seminar ...

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NAACP branch installs officers, board

Gainesville Sun

The Alachua County branch NAACP installed officers and executive board members for new two-year terms. They are, from left, Jamal Sowell, first vice president; Dorcas Ramseur, assistant secretary; Yvonne Hinson-Rawls, board member; Jackie J. Hart, ...

[See all stories on this topic »](#)

Teachers, NAACP team to tackle education issue

Boston.com

BOSTON (AP) — The Massachusetts Teachers Union and local **NAACP** are teaming to tackle a gap in education achievement they say affects students of color and low-income students. The partnership's priorities will include recruiting more minorities as ...

[See all stories on this topic »](#)

O'Malley, NAACP Call to End Maryland's Death Penalty

Patch.com

Gov. Martin O'Malley announced his plans to "kill the death penalty" inside a crowded room at the Miller Senate Building in Annapolis on Tuesday. "It would seem to me that in—especially in—tough times, if there's something that we're doing in our ...

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NAACP to present awards at luncheon

Mt. Vernon Register-News

Hughes, he said, works to provide direction and help for those on probation, including finding work and community service work for them to do; Campbell recently accepted a different job in Peoria, and the **NAACP** wanted to recognize his efforts in the ...

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NC NAACP President: State legislators should support “sensible” gun control ...

The Progressive Pulse

As President Obama calls on Congress to advance a broad package of proposals to curb gun violence, the president of the NC **NAACP** is voicing support for stricter gun control. Rev. William Barber says while the **NAACP** does not oppose gun ownership, ...

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Lindbergh Guillory, Sr., Korean War vet, NAACP official

EuniceToday.com

MAMOU ~ Visitation will be held from 7:00 am to 11:00 am with funeral services following at 11:00 am on Saturday, January 19, 2013 all at St. Paul Baptist Church, 1300 5th St., Mamou, LA for Lindbergh Guillory, Sr., 78. Interment will follow in the St ...

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NAACP, others call on anti-poverty focus in NC

Winston-Salem Journal

A coalition led by the state chapter of the **NAACP** promoted its agenda at a policy briefing for grass-roots leaders at the Legislative Building and distributed documents to legislators' offices before the two-year session begins in earnest Jan. 30 ...

[See all stories on this topic »](#)

Greatness Starts Before Grade School

The Root

(Special to The Root) -- Continuing their historical practice of working together to address issues of concern to the African-American community, the **NAACP**, National Urban League, United Negro College Fund and **NAACP** Legal Defense and Educational ...

[See all stories on this topic »](#)

Merrimack Valley NAACP hosts MLK breakfast Monday

Eagle-Tribune

The Merrimack Valley Branch of the **NAACP** will mark the Birthday of Martin Luther King Jr. next Monday with its traditional breakfast and a program honoring the memory of the slain civil rights leader. The event begins at 8:30 a.m. at the UMass Lowell ...

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NAACP chapter holds annual MLK celebration

Hudson Valley Press

For the seventh year, the Middletown chapter of the **NAACP** presented "A Celebration of the Life of

Reverend Dr. Martin Luther King, Jr." at St. Paul's United Methodist Church in Middletown. A non-denominational tribute, the event featured an array of ...

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NAACP holds rally to protest Gov. Bentley's rejection of Medicaid benefits for ...

Greene County Democrat

The NAACP joined by other partner organizations from across the state spearheaded the rally. Bernard Simelton, President of the Alabama NAACP said, "Governor Bentley has decided not to set up an insurance exchange in Alabama, under the Affordable ...

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Longview NAACP to offer financial aid workshop

Longview News-Journal

Longview NAACP to offer financial aid workshop. Story · Comments. Print: Create a hardcopy of this page; Font Size: Default font size: Larger font size. Posted: Wednesday, January 16, 2013 4:00 am. Longview

NAACP to offer financial aid workshop From ...

[See all stories on this topic »](#)

MD governor, NAACP call for death penalty repeal

FOX43.com

(Annapolis, MD) — Maryland Governor Martin O'Malley and NAACP president Benjamin Jealous are among opponents who are working to eliminate the state's death penalty. O'Malley and Jealous want the General Assembly to repeal capital punishment, ...



[See all stories on this topic »](#)

NAACP, others call on anti-poverty focus

Greenville Daily Reflector

RALEIGH — North Carolina civil rights leaders said Republicans now leading state government have moral and constitutional reasons to make lifting people out of poverty their top priority. The NAACP in North Carolina organized a policy briefing Tuesday ...

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Blogs

2 new results for NAACP

NAACP: National Association for the Abortion of Colored People ...

By The Radiance Foundation

The NAACP's selective, and often feigned, outrage on a myriad of issues is befitting of a multiple personality disorder, with its stronger personality being one that embraces all things liberal, most things socialistic, and nothing pro-life. They'll ...

The Radiance Foundation

The NAACP Is Hitting Back At UK Over Racism

By jake

An Informed, Savvy Take on Media & Politics in Kentucky.

Page One

Web

2 new results for NAACP

Teamer new NAACP president | Salisbury Post

Scott Teamer is the new president of the Salisbury-Rowan Branch of the NAACP. He succeeds former president Dr. Bryant Norman Jr. A resident of...

www.salisburypost.com/article/20130115/SP01/130119813/

NAACP calls on new legislature to address poverty in new session ...

There's just a couple weeks left before lawmakers make their way back to the General Assembly. But two organizations are already calling on them to address ...

charlotte.news14.com/.../naacp-calls-on-new-legislature-to-add...

Tip: Use quotes ("like this") around a set of words in your query to match them exactly. [Learn more](#).

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Exhibit B

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January 28, 2013

VIA EXPRESS MAIL: #EV 331089933 US

AND EMAIL: ryanbomberger@yahoo.com
and info@theradiancefoundation.org

Mr. Ryan Bomberger
The Radiance Foundation
PO Box 61941
Virginia Beach, Virginia 23466

VIA EXPRESS MAIL: #EV 331089902 US

AND EMAIL: sertelt@aol.com

Mr. Steven Ertelt
Lifenews.com
PO Box 270841
Fort Collins, Colorado 80527

Re: NAACP Trademark

Gentlemen:

This law firm represents the National Association for the Advancement of Colored People ("NAACP"). As you well know, the NAACP is the nation's oldest civil rights organization, operating for over one hundred years and using its trademarks NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE (the "Phrase"), the acronym NAACP (the "Acronym"), its "Scales of Justice" seal (the "Seal") the trademark IMAGE AWARDS (the "Name") and its Image Awards logo (the "Logo") (collectively, the "Marks") in connection with, among other things, civil rights and racial issues. The NAACP brands are famous and strong.

The NAACP owns the registered trademark for the Acronym and the Name at the U.S. Patent and Trademark Office, Registration Nos. 1,188,182 and 3,014,745. The NAACP has common law rights in the Marks throughout the United States, meaning that each of the Marks has full protection, fame and strength under the U.S. trademark law. As a result of the NAACP's promotion and use of all of the Marks, individuals today associate each of the famous Marks exclusively with the NAACP.

The NAACP recently discovered that you are using the term "NAACP," the phrase "National Association for the Abortion of Colored People," the Name and depictions of the Seal and the Logo (collectively, the "Infringing Uses"). Your use is in a number of areas, including on your websites and on Facebook.

While you are certainly entitled to express your viewpoint, you cannot do so in connection with a name that infringes on the NAACP's rights. Your continued use of each of the Infringing Uses, which are unmistakably similar to and certainly intended to copy the NAACP's Marks, constitutes willful trademark infringement as well as unfair competition and palming off of the NAACP's Marks. Your use of the Infringing Uses will cause consumer confusion in the marketplace, along with the misimpression that the NAACP in some way sponsors, supports, endorses and/or is affiliated with you, in violation of the Lanham Act (15 U.S.C. §§ 1051, *et seq.*). As a separate cause of action, your use will tarnish the goodwill built up in the NAACP Marks, as it will harm the NAACP's brand.

Due to your infringement, you are also liable under trademark, unfair competition and other laws for actual damages, attorneys' fees and punitive damages.

For these reasons, on behalf of our client, we demand that you immediately cease and desist from all uses of any of the Infringing Uses in any form, including on your web pages and on Facebook, and in the future make no use of the Infringing Uses and any other marks that are likely to be confused with the NAACP's Marks.

Please confirm to us in writing within seven (7) days of the date of this letter that you have taken all of these steps. If we do not receive a timely and satisfactory response from you within this time period, be assured that the NAACP will take the appropriate steps to stop your infringing activities and obtain appropriate damages. Your failure to comply with this demand will constitute additional evidence of willful infringement.

We look forward to your timely response and full cooperation. This letter does not constitute an exhaustive statement of the NAACP's legal position. In writing this letter, the NAACP does not waive any rights or remedies to which it is entitled, which rights and remedies are expressly reserved.

Sincerely,



Ned T. Himmelrich

cc: Kim M. Keenan, General Counsel